

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeene G. Kelly.

El Paso Natural Gas Company

Docket No. RP04-328-000

ORDER REJECTING TARIFF SHEET

(Issued July 8, 2004)

1. On June 9, 2004, El Paso Natural Gas Company (El Paso) filed a revised tariff sheet<sup>1</sup> establishing procedures El Paso will use when demonstrating that firm capacity is available for re-sale. The tariff sheet listed in footnote No. 1 is rejected for the reasons discussed herein. This order is in the public interest since El Paso's proposed tariff provision is unnecessary in light of the reporting requirements set forth in section 284.13(d) Commission's regulations, and this order requires El Paso to adhere to the requirement that it may not enter into new firm service agreement unless it has capacity available to provide that new service without degrading service to its existing customers.

**I. Background**

2. The Commission issued an order on May 31, 2002, in Docket No. RP00-336-002, *et al.*, establishing the conversion of Full Requirements (FR) shippers to contract demand (CD) service and the conversion of system-wide receipt point rights to specific receipt point rights or pools.<sup>2</sup> The Commission advised El Paso that it may not enter into new firm service contracts unless it can demonstrate that it has capacity available to provide that service without degrading service to its existing firm customers.<sup>3</sup>

---

<sup>1</sup>Third Revised Sheet No. 290A to FERC Gas Tariff, Second Revised Volume No. 1A.

<sup>2</sup>99 FERC ¶ 61,244 (2002).

<sup>3</sup>99 FERC ¶ 61,244, at 62,012 (2002).

3. The Commission issued an order on July 9, 2003, in Docket No. RP00-336-006, granting and denying the requests for rehearing and clarification.<sup>4</sup> The Commission affirmed its May 31, 2002 Order by finding that El Paso cannot sell as firm service, capacity for which there is a prior commitment; this includes capacity reserved to manage transients. The Commission noted that 210 MMcf/d is a reasonable amount for El Paso to reserve for management of transients.<sup>5</sup> The Commission found that the sale, on a firm service basis, of capacity that is required to serve firm shippers under their current contracts or needed for system purposes would violate the Commission's regulations<sup>6</sup> and El Paso's current contracts. The Commission also found that, except with regard to the capacity pool for converting FR shippers, El Paso may remarket its turnback capacity if that capacity is not needed to serve current firm service obligations.

## **II. Instant Filing**

4. El Paso states that, while the orders in the Capacity Allocation Proceeding provide that El Paso may not enter into any new contracts unless it can demonstrate that it has capacity available to serve those contracts, the process by which such a demonstration must be made is unclear. El Paso states that its filing is intended to address the uncertainties of the required demonstration.

5. Section 20.18 of El Paso's General Terms and Conditions (GT&C) currently provides:

El Paso may not sell as firm service, capacity for which there is a prior commitment. Prior commitment includes capacity subject to existing firm contracts and capacity reserved to manage transients.

---

<sup>4</sup>104 FERC ¶ 61,045 (2003).

<sup>5</sup>104 FERC ¶ 61,045, at P 161 n.151 (2003).

<sup>6</sup>18 C.F.R. § 284.7(a)(3)(2003).

El Paso proposes to amend this section by adding the following language:

El Paso will conduct an internal analysis and maintain supporting information sufficient to reasonably demonstrate that, under prudent operating standards, such capacity is not required to meet the existing contract entitlements of its converted Full Requirements shippers and Contract Demand shippers. El Paso shall provide such documents to the Commission, shippers, or state regulatory agencies upon request.

6. El Paso proposes to use the procedures described below to demonstrate that firm capacity is available for re-sale.

**A. Capacity available through new services and facilities**

7. El Paso states that when capacity becomes available for sale as a result of either new services or construction of new facilities, it will make the required demonstration by filing the proposed new contracts or filing the appropriate certificate or tariff application along with supporting documentation for Commission review and approval. El Paso claims that this approach is consistent with the Commission's directives in the California Receipt Service order in Docket No. RP00-336-007.<sup>7</sup>

**B. Capacity available through contract changes**

8. El Paso states that when capacity becomes available for re-sale as the result of contracting changes, El Paso will make the required demonstration by conducting an internal analytical process and maintaining appropriate documentation of its analysis. El Paso claims that this process provides the tools for El Paso to confirm that, under prudent operating standards, the capacity to be re-sold is not required to meet the existing contract entitlements of its converted FR shippers and existing CD shippers. However, El Paso believes that it should not file and the Commission should not review contracts for the re-sale of existing capacity that conform to the applicable Form of Service Agreement prior to any commencement of service because review would severely limit and may even prohibit such sales.<sup>8</sup>

---

<sup>7</sup>101 FERC ¶ 61,379 (2002); *reh'g denied and clarifications granted*, 105 FERC ¶ 61,130 (2003). El Paso states that to date, no shipper has entered into a new firm contract for this service.

<sup>8</sup>El Paso notes that it will continue to file all non-conforming agreements for Commission review.

## **1. Internal Approach**

9. El Paso states that its capacity posting process uses an internal evaluation process to determine whether El Paso has capacity available for sale without adversely impacting current firm shippers. El Paso also states that when it re-sells capacity that has become unsubscribed, it does so through the capacity release process. This process includes posting detailed information on the capacity release system. El Paso claims that it will continue to give priority to existing converted FR and CD shippers for the sale of firm capacity, consistent with section 20.19 of its tariff. El Paso also claims that the capacity release system is a transparent, effective and fair way to sell capacity. El Paso concludes that information about sales made through capacity release is available for all shippers to evaluate and challenge if necessary.<sup>9</sup>

## **2. Demonstration Process**

10. El Paso states that the demonstration process entails an internal analysis of the “pedigree” of the capacity that had become unsubscribed to determine what, if any, primary rights could be sold. El Paso determined that re-sale of capacity rights within the same general geographic area of the prior use would not adversely affect other firm shippers. As a result, El Paso states that it posts the available capacity on its capacity release board for re-sale. El Paso has provided a full listing of the capacity El Paso has re-sold using this process of evaluation as set forth in Exhibit A to its application.<sup>10</sup> While El Paso states that it is confident in this “pedigree” approach, El Paso recognizes that it will become increasingly difficult to rely on the “pedigree” analysis as shippers increasingly elect to exercise rights to re-designate primary receipt and delivery points. Accordingly,

---

<sup>9</sup>El Paso notes that sales of unsubscribed capacity are posted on El Paso’s capacity release site on its EBB, as well as included in El Paso’s quarterly update of its Index of Customers. All awarded capacity release transactions are also posted on the EBB under the heading “Transactional Reports” on the day that the contract becomes effective.

<sup>10</sup>El Paso notes that it has also re-sold capacity it had previously purchased and made available to support the Reserved Capacity Pool as El Paso’s obligation to make the capacity available phased out. El Paso refers to Exhibit B of its application for a full listing of re-sales of that capacity.

El Paso states that it has adopted a process in which the “pedigree” analysis is supplemented by a “hydraulic” analysis of pipeline capacity. The “hydraulic” analysis seeks to determine what receipt and delivery rights would be hydraulically equivalent to the rights released by the terminating contract. El Paso presents the process flow of this methodology as Exhibit C to its application.

11. El Paso states that its internal evaluation process is rooted in two equally important fundamental concepts. The first concept is that firm shippers on El Paso’s system will abide by El Paso’s tariff. El Paso claims that this means shippers will endeavor to take ratably over the course of each day and to balance daily as required by El Paso’s tariff in the appropriate rate schedules and in sections 4 and 20.8 of its GT&C. Under the second concept, El Paso states that it continues to reserve an average of 210 MMcf/d of capacity that El Paso needs to manage the operational conditions that occur on its system. In addition to the above analysis, El Paso proposes to maintain supporting documentation or information sufficient to reasonably demonstrate the results of its evaluation process. El Paso claims that it will provide such documents to the Commission, shippers, or state regulatory agencies upon request. El Paso proposes to retain such documentation in its files for at least three years.

### **III. Public Notice and Comments**

12. El Paso’s filing was duly noticed with interventions and protests due on or before June 21, 2004. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of rule 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. § 385.214 (2003)). Any opposed or untimely filed motion to intervene is governed by the provisions of rule 214. Comments were filed by Salt River Project Agricultural Improvement and Power District (SRP), MGI Supply LTD. (MGI), and Southern California Gas Company (SoCalGas). A protest was filed by Indicated Shippers<sup>11</sup> and a joint protest was filed by East of California Firm Shippers (EOC Shippers).<sup>12</sup>

---

<sup>11</sup>Indicated Shippers consist of Aera Energy, LLC, BP America Production Company, BP Energy Company, Burlington Resources Trading Inc., Chevron Texaco Natural Gas, Conoco Phillips Company, Coral Energy Resources, L.P., and Occidental Energy Marketing.

<sup>12</sup>EOC Shippers consist of Arizona Electric Power Cooperative, Inc., Arizona Public Service Co., Pinnacle West Energy Corporation, El Paso Electric Co., El Paso Municipal Customer Group, Phelps Dodge Corporation, Public Service Company of New Mexico, Southwest Gas Corporation, Texas Gas Service Co., and UNS Gas Inc.

13. SRP states that it does not object to the re-sale of firm capacity by El Paso. However, SRP argues that there is continuing uncertainty regarding the flexibility and availability of capacity resulting from El Paso's recent pathing proposal in Docket No. RP04-251-000. Therefore, SRP requests that the instant filing be considered by the Commission following the conclusion of the proceedings in Docket No. RP04-251.

14. MGI states it has no interest in limiting El Paso's ability to market capacity that is genuinely surplus to the needs of its existing firm customers, but is concerned by some of the assumptions El Paso plans to use to determine what capacity is truly surplus. Specifically, MGI states that El Paso does not attempt to explain the relationship between its assumption that shippers will balance daily and its pending tariff filing in Docket No. RP04-248-000, wherein it is proposing a series of penalties to force that result as of May 1, 2005. Further, MGI states that it seems premature for El Paso to be building a capacity auction program around a set of operating assumptions that it is essentially admitting do not exist at present.

15. SoCalGas agrees with El Paso that the procedure for making the required demonstration of the availability of capacity for re-sale should not be so impractical as to be useless. However, SoCalGas suggests that El Paso be required to file the internal analysis and supporting documentation, on an individual contract or periodic basis as may be appropriate, without a requirement of prior approval of the re-sale of such capacity.

16. Indicated Shippers request that El Paso's filing be rejected as premature. Indicated Shippers object to El Paso's proposal for two reasons. First, Indicated Shippers argue that it should be expressly clarified that El Paso will not assume displacement capacity when it calculates how much capacity is available for re-sale. Indicated Shippers object to El Paso's described methodology because it proposes to use the April 3, 2003 receipt point allocation as the starting point, which includes displacement assumptions.<sup>13</sup> Indicated Shippers argue that if displacements are relied upon to serve existing firm needs, then firm service may not be firm as required by the Commission's regulations and the capacity allocation orders in Docket No. RP00-336-000. Indicated Shippers conclude that the solution to this problem is to require that when existing firm contracts expire, El Paso must retain capacity equal to the displacement capacity requirements that El Paso has now identified.

---

<sup>13</sup>Indicated Shippers cite 106 FERC ¶ 61,083 at P 30 (2004).

17. Second, Indicated Shippers argue that there is uncertainty as to what specific locations and paths will be freed up when existing contracts expire. Indicated Shippers conclude that the methodology for selling future firm capacity should not be established until El Paso's system is fully pathed and firm capacity rights are defined for existing shippers in the Order No. 637 proceeding in Docket No. RP04-251-000.

18. EOC Shippers ask that the Commission reject the proposed tariff language, or at a minimum suspend its effectiveness pending the outcome of proceedings in Docket Nos. RP04-248 and RP04-251. EOC Shippers also request that the Commission confirm that El Paso has an obligation to demonstrate available system capacity by filing any new contracts with the Commission for public review and approval<sup>14</sup> before it may enter into any new contract for firm service. EOC Shippers argue that the demonstration of available capacity is linked with El Paso's pending pathing proceeding in Docket No. RP04-251 and the daily balancing proceeding in Docket No. RP04-248. EOC Shippers also contend that the proposed tariff language does not distinguish between sales of new capacity and re-sales of expiring capacity. As a result, EOC Shippers argue that the proposed tariff language implies that all new contracts, whether for new or expiring capacity, would be subject solely to El Paso's internal evaluation procedures. EOC Shippers conclude that this procedure is inconsistent with the Commission's regulations, and clarification of this proposed tariff section would be helpful.

#### **IV. Discussion**

19. As explained above, in the May 31, 2002 Order in El Paso's Capacity Allocation Proceeding, the Commission found that El Paso is obligated to provide firm shippers with the service for which they have contracted, and must reasonably insure the quality of that firm service and also insure that its actions do not degrade the quality of firm service. Therefore, the Commission advised El Paso that it may not enter into new firm service contracts unless it can demonstrate that it has available capacity to provide the service.<sup>15</sup> In the July 9, 2003 Order on rehearing in that proceeding, the Commission affirmed the requirement that El Paso must show that re-sales of existing capacity will not degrade service to its existing firm customers. The Commission stated that El Paso cannot sell as firm service, capacity for which there is a prior commitment, and this includes the 210

---

<sup>14</sup>EOC Shippers cite the Commission's order on El Paso's California Receipt Service, 101 FERC ¶ 61,379 at P 16 (2002).

<sup>15</sup> 99 FERC at 62,012.

MMcf/d reserved to manage transients. The Commission clarified that this restriction is not a prohibition against all sales of capacity, but is an appropriate means of protecting the quality and quantity of service to El Paso's existing customers.<sup>16</sup> The Commission also held that during the pendency of the 1996 Settlement, El Paso must first offer firm capacity that becomes available to its existing shippers.<sup>17</sup>

20. The Commission did not, however, specify any particular procedures for El Paso to use in determining whether it has excess firm capacity and did not require El Paso to amend its tariff to include procedures. The Commission's policy is that the tariff should reflect only the language necessary to define the service, rates, and terms and conditions.<sup>18</sup> Consistent with this general policy, the proposed tariff does not contain the details of El Paso's internal procedures. Commission approval of a pipeline's internal procedures is not required, but those procedures must conform to the general principles of the tariff and the Commission's regulations. Here, those general principles require that El Paso not enter into any new contracts unless it has sufficient capacity to provide service under those contracts without degrading service to existing shippers.

21. Further, except with regard to the California Receipt Service, the Commission has not required and will not require El Paso to file each individual contract with the Commission to demonstrate that it has the capacity to perform the service. The Commission's purpose is to assure that the firm service of existing customers will not become unreliable because El Paso has contracted to provide more service than it has the capacity to provide. Any procedures used by El Paso must accomplish that goal. While the Commission finds that it is appropriate for El Paso to adopt internal procedures to assure that it has capacity to provide service under new contracts, the adoption of internal procedures is not a substitute for El Paso's ensuring that it does not sell more capacity than it can provide. In other words, if El Paso enters into a contract for service and does not have the capacity to provide that service without degrading the quality of service to its existing customers, the fact that it followed its internal procedures for determining whether capacity exists does not excuse the result.

---

<sup>16</sup> 104 FERC ¶ 61,045 at P 161.

<sup>17</sup> 99 FERC at ¶ 62,012.

<sup>18</sup> See Boston Edison Company, 98 FERC ¶ 61,292 at 62,269 (2002).



22. Under the requirements of the Commission's regulations, El Paso must post on its internet website equal and timely access to information relevant to the availability of capacity at receipt and delivery points, on the mainline, and in storage fields.<sup>19</sup> Further, El Paso must post information with regard to each contract for firm and interruptible service.<sup>20</sup> In addition, consistent with the Commission's prior requirement that El Paso must demonstrate that it has capacity to enter into new firm service contracts without degrading service to existing firm shippers, El Paso must, upon request by any shipper, provide its internal analyses demonstrating that it has capacity available to provide new firm service without degrading service to existing shippers.

The Commission orders:

(A) The revised tariff sheet listed in footnote No. 1 is rejected for the reasons discussed herein.

(B) Upon request of any shipper, El Paso must provide its internal analyses demonstrating that it has capacity available to provide new firm service without degrading service to existing firm shippers.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

---

<sup>19</sup> 18 C.F.R. § 284.13(d) (2004).

<sup>20</sup> 18 C.F.R. 284.13(b) (2004).